

Before the
FEDERAL COMMUNICATIONS COMMISSIONS
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of Subscriber Carrier Selection)	
Changes Provisions of the Telecommunications)	CC Docket No. 94-129
Act of 1996)	
)	
Time Warner Telecom Inc. Petition for Waiver)	

EMERGENCY PETITION FOR LIMITED WAIVER

Time Warner Telecom Inc. ("Time Warner Telecom"), by its attorneys, respectfully requests a limited waiver of the customer authorization and verification requirements codified in the Commission's rules, (47 C.F.R. §§ 64.1100 through 64.1190), and relevant Commission Orders to the extent necessary to permit it to transfer certain customers of GST Telecommunications, Inc. and affiliated companies ("GST") to Time Warner Telecom's customer base without first obtaining the customers' authorization and verification.¹ In support of that request, Time Warner Telecom states as follows:

¹ The FCC's verification rules prohibit a telecommunications carrier from submitting a preferred carrier change order unless the carrier has obtained either: (1) the subscriber's written letter of agency; (2) the subscriber's electronic verification via a toll-free telephone number used exclusively to verify subscriber carrier changes; or (3) the subscriber's oral authorization to submit the preferred carrier change order from an appropriately qualified independent third party that confirms and includes appropriate verification data – e.g., the subscriber's date of birth or social security number. See 47 C.F.R. §64.1100 (1999).

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I. Introduction

The Commission's rules may be waived for good cause.² As demonstrated herein, Time Warner Telecom fully satisfies the special circumstances required for a waiver of the Commission's rules as stated in WAIT Radio v. FCC³ and expeditious grant of the instant petition will serve the public interest. Moreover, Time Warner Telecom's request for a waiver is substantially identical to waivers of these rules previously granted by the Commission to the other carriers.⁴ Time Warner Telecom requests expedited treatment of this waiver so that petitioner and GST may close their transaction as soon as possible. As will be described below, Time Warner Telecom is acquiring the assets of GST pursuant to a bankruptcy sale. Because of GST's current financial circumstances, expeditious approval of this waiver request is necessary to ensure that there will be no disruption in service to those customers served by GST.

II. Background

Time Warner Telecom currently offers local exchange and interexchange telecommunications services at locations throughout the United States. It is a publicly-traded corporation whose largest shareholder is Time Warner Inc. Time Warner Telecom is authorized to provide service in thirteen states and has pending applications for authorization in ten other states. In addition, it provides international service pursuant to Section 214 authority awarded by

² 47 C.F.R. § 1.3.

³ WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *See also* Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164 (D.C. Cir. 1990).

⁴ *See infra* note 8.

the Commission.⁵ GST is authorized to provide interexchange services in 49 states and international telecommunications service pursuant to its Section 214 authority.⁶

On May 17, 2000, GST filed in the United States Bankruptcy Court for the District of Delaware for protection under Chapter 11 of the U.S. Bankruptcy Code. Pursuant to the supervision of the Bankruptcy Court, an auction of GST's assets was conducted between August 22 and August 25, 2000. Time Warner Telecom's bid to acquire most of GST's assets was successful. At the conclusion of that auction, GST received approval from the court to proceed toward a sale of those assets to Time Warner Telecom. Time Warner Telecom and GST have entered into a definitive asset purchase agreement which was approved by the Bankruptcy Court on September 21, 2000.

As part of Time Warner Telecom's acquisition of certain assets of GST, the parties intend to transfer substantially all of the assets of GST, including customer accounts and accounts receivable, to Time Warner Telecom. GST has decided to terminate service to these customers and has agreed to transfer these customer accounts to Time Warner Telecom. Time Warner Telecom will provide interstate, intrastate and international interexchange service to these

⁵ File No. ITC-96-688, Time Warner Communications, granted effective February 7, 1997. *See Public Notice Report No. I-8228*, released February 13, 1997.

⁶ Time Warner Telecom seeks to transfer selected customers from the following subsidiaries of GST Telecommunications, Inc. with Section 214 authorization as noted: GST Action Telecom, Inc. (ITC-97-632), GST Call America, Inc. (ITC-96-566-TC), GST Net, Inc. (ITC-96-462 and ITC-98-310-TC), ICON Communications Corp. (ITC-98-331-TC, International Telemanagement Group, Inc. d/b/a Call America (ITC-90-137), NACT Telecommunications, Inc. (ITC-97-167), Totalnet Communications, Inc. (ITC-96-526), GST Telecom Pacific, Inc. (ITC-97-679), GST Telecom, Inc. (ITC-96-307 and ITC-97-331). By a separate filing, Time Warner Telecom and GST jointly have applied to the Commission for consent to the assignment of all Section 214 authorizations held by GST to Time Warner Telecom.

customers. Unless the FCC grants this Petition, these customers will no longer be serviced by GST and may be subject to higher rates and lack of available telecommunications service.

In conformance with the notification procedures previously approved by the Commission in this docket, Time Warner Telecom will send the attached notice letters to the affected GST customers. The letter attached as Exhibit A is intended to notify the affected customers of the transfer prior to customer migration (the "Notice Letter"). The Notice Letter will inform the affected customers that: (1) Time Warner Telecom will be acquiring the assets of GST; (2) the customers' telecommunications service will be transferred to Time Warner Telecom; (3) the customers will be assessed no charge in connection with the transfer from GST to Time Warner Telecom; (4) the customers will receive comparable services and rates to those provided by GST; and (5) the customers will be free to change carriers if they are not satisfied with the service provided by Time Warner Telecom and any preferred carrier change charge will be reimbursed. The letter will also provide the affected customers with a toll-free number to call Time Warner Telecom with any questions concerning the transaction.

After consummation of the transaction, Petitioner will send the letter attached as Exhibit B (the "Post-Transaction Letter") welcoming customers to Time Warner Telecom and reiterating the information contained in the Notice Letter.

Time Warner Telecom will cooperate with the Commission to investigate and resolve any outstanding complaints of affected customers regarding services provided by GST. Time Warner Telecom will also amend its tariffs to include the applicable GST services and rates for these customers.

III. Special Circumstances Exist to Grant the Waiver Request

The Commission has authority to waive a rule if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.⁷ Such special circumstances exist in this case for waiver of 47 C.F.R. §§ 64.1100 through 64.1190. It is of paramount importance to Time Warner Telecom and to GST to ensure a seamless transition of the affected GST customers to Time Warner Telecom without inconveniencing the customers or interrupting service. Further, prompt approval of this request will enable the parties to consummate the asset acquisition at the earliest opportunity. Prompt completion of this sale is essential to protect the interests of GST's creditors as well as those customers who have come to rely on GST's service.

Moreover, the letters that Time Warner Telecom will send to the affected customers will ensure that those customers are fully informed of the process and that their rights are adequately protected. In addition, after customers are transferred to Time Warner Telecom, they will receive a second letter again informing them of this information.

By granting this waiver request to allow the transfer of these customers via notification as described in this Petition, the Commission will ensure that the policy goals which underlie the carrier change rules are served but in a more efficient fashion that will permit Time Warner Telecom to transfer seamlessly GST customers to its service without any disruption in service. Further, Time Warner Telecom will work with GST and with the Commission to investigate and resolve outstanding customer complaints (if any) regarding services that may have been provided

⁷ WAIT Radio at 1159, Northeast Cellular Telephone Co. at 1166.

by GST. The circumstances involved in the instant Petition are similar to those in which the Commission has previously found sufficient to justify a waiver of these rules for other carriers.⁸

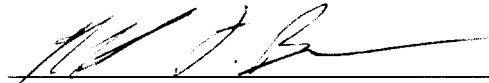
⁸ See e.g., Iowa Telecomms. Servs. Petition for Waiver, CC Docket No. 94-129, *Order*, DA-99-2777 (rel. Dec. 10, 1999) (granting request to allow transfer of customer base following market exit by previous carrier); International Exchange Comms. Petition for Waiver, CC Docket No. 94-129, *Order*, DA 99-1819 (rel. Sep. 10, 1999) (granting waiver to allow transfer of customer accounts pursuant to asset purchase agreement with another carrier); MCI WorldCom, Inc. Petition for Waiver, CC Docket No. 94-129, *Order*, 14 FCC Rcd 12264 (rel. Aug. 6, 1999) (granting waiver to allow transfer of customer accounts pursuant to asset purchase agreement with another carrier); CoreComm Limited Petition for Waiver, CC Docket No. 94-129, *Order*, DA 99-893 (rel. May 13, 1999) (granting waiver to allow transfer of customer accounts pursuant to asset purchase agreement coinciding with bankruptcy proceeding).

Conclusion

WHEREFORE, in view of the foregoing, Time Warner Telecom respectfully requests the Commission grant a limited waiver of the authorization and verification requirements of the Commission's rules, 47 C.F.R. §§ 64.1100 - 64.1190 (1999), and relevant Orders to the extent necessary to permit it to transfer customers of GST to Time Warner Telecom's customer base without first obtaining the customers' authorization and verification.

Respectfully submitted,

TIME WARNER TELECOM INC.



Mitchell F. Brecher

GREENBERG TRAURIG, LLP

800 Connecticut Avenue, NW

Washington, DC 20006

Telephone: (202) 331-3100

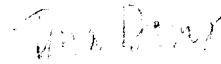
Facsimile: (202) 331-3101

Counsel for Time Warner Telecom Inc.

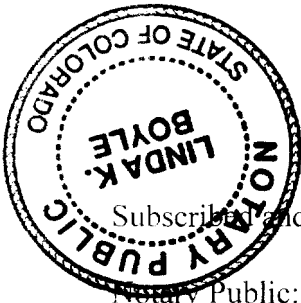
September 27, 2000

VERIFICATION

I, Tina Davis, being first duly sworn, state that I am the Assistant General Counsel of Time Warner Telecom Inc., and that I am authorized to make this Verification on behalf of Time Warner Telecom; that I have read the foregoing Petition and know the contents thereof; and that the same are true and correct to the best of my knowledge, information, and belief.



Tina Davis
Assistant General Counsel
TIME WARNER TELECOM Inc.



Subscribed and sworn to before me this 25th day of September 2000.

Notary Public: Linda K. Boyle

My commission expires: May 17, 2004

Exhibit A
Pre-Transaction Notice Letter
TIME WARNER TELECOM
NOTICE OF CHANGE IN TELECOMMUNICATIONS SERVICE PROVIDER

[DATE]

Dear Current GST Customer:

Time Warner Telecom Inc., a major national provider of local and long distance services, has entered into an agreement with GST Telecommunications, Inc. ("GST") whereby Time Warner Telecom will purchase the assets of GST. As part of this transaction, GST and Time Warner Telecom have agreed to transfer GST customers' accounts from GST to Time Warner Telecom. As of December 1, 2000 you will begin receiving your telecommunications service from Time Warner Telecom.

Please note the following important information:

1. As of December 1, 2000, your telecommunications service, previously provided by GST, will be provided by Time Warner Telecom.
2. You will be assessed no charge in connection with the transfer of your account from GST to Time Warner Telecom.
3. Time Warner Telecom will provide you with high quality telecommunications services at comparable rates to those of GST.
4. In the event that you would prefer to use another company as your telecommunications carrier, you have the right to switch to a telecommunications carrier of your choice. Time Warner Telecom will reimburse you for any preferred carrier change charges if they are imposed by your local exchange carrier in connection with the switch over to Time Warner Telecom.

Time Warner Telecom extends a special welcome to all GST customers. We also recognize, however, that you are free to select another carrier if you are not satisfied with the service you receive. We realize you have a choice of telecommunications carriers, and we appreciate your business. Please call Time Warner Telecom at its toll-free customer service number, 1-888-333-0520, if you have any concerns or questions regarding your change in service to Time Warner Telecom.

Sincerely,

TIME WARNER TELECOM INC.

Exhibit B

Post-Transaction Notice Purchaser

TIME WARNER TELECOM INC.

[DATE]

IMPORTANT NOTICE

As announced in previous correspondence, Time Warner Telecom has purchased the assets of GST Telecommunications, Inc. and, as part of this transaction, GST and Time Warner Telecom agreed to transfer GST customers' accounts from GST to Time Warner Telecom. This transaction will allow us to offer a wide variety of products at comparable rates while maintaining the same quality of service you have received from GST in the past. No charges or fees will be imposed as a result of this transaction and the transfer of your account to Time Warner Telecom.

We are confident you will be pleased with the superior service you receive from Time Warner Telecom. We value our relationship and pledge our commitment to providing you with high quality services and personalized customer care. However, if you are not satisfied with the service you receive from Time Warner Telecom, please understand that you are free to choose another telecommunication service provider.

Please contact us 1-888 333-0520 if you have any questions or concerns about your service.

Time Warner Telecom

CERTIFICATE OF SERVICE

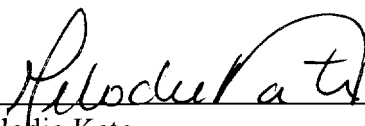
I, Melodie Kate, a secretary in the law firm of Greenberg Traurig, LLP, certify that on the 27th day of September, 2000, I have caused to be served by hand delivery, a true copy of the foregoing Emergency Petition for Limited Waiver:

Dorothy Attwood, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. - 5-C450
Washington, DC 20554

Michele K. Walters
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. - 5-A441
Washington, DC 20554

William Cox
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. - 5-B530
Washington, DC 20554

ITS
Federal Communications Commission
445 12th Street, S.W. CY-B400
Washington, DC 20554



Melodie Kate